IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1286 of 2007

Rajeswari .. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Home, Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District
Vellore-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein calling for the records relating to the detention order passed by the second respondent pertaining to the order made in C.3.D.O.No.74/2007 dated 24.08.2007 in detaining the detenue under 2-b of Tamil Nadu Act 14 of 1982, as a Bootlegger and quash the detenu Sun @ Shanmugam, Son of Balasundaram, aged about 52 years, who is detained at Central Prison,Vellore, before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Sun alias Shanmugam, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Bootlegger and he has to be detained under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic

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Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records relating to the detention order passed by the second respondent pertaining to the order made in C3.D.O.No.74/2007, dated 24.8.2007, to quash the same and to direct the respondents to produce the detenu, now confined at Central Prison, Vellore before this Court and to set him at liberty.

3.1. The order of detention dated 24.8.2007 was passed on the basis of ground case in Crime No.475 of 2007 for alleged commission of offences punishable under Sections 4(1)(i), 4(1)(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 27.7.2007 when the Sub-Inspector of Police, Prohibition Enforcement Wing, Ranipet and her police party observed villages within its limits in connection with prohibition offences, they found the detenu pouring liquid into a violet colour plastic tumbler, and on seeing the police party, the person who was standing for consuming the same escaped from the place. The detenu was arrested and he admitted the offences committed. The contraband was seized. The samples of arrack seized were sent for chemical analysis and the report reveals that the samples contain 6.9 mgms% w/v of Atropine per 100 ml. a poisonous substance.

3.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu, viz., Crime Nos.1270 of 2006 and 121, 258, 276 and 422 of 2007 on the file of Arcot Town Police Station for the offence punishable under Sections 4(1)(i), 4(1-A)(ii), 4(1)(i)(aaa), 4(1)(i)(aa) of the Tamil Nadu Prohibition Act; and Crime No.65 of 2007 registered on the file of Ranipet Prohibition Enforcement Wing for the offence punishable under Section 4(1)(a) of the Tamil Nadu Prohibition Act.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main ground of attack in this case is that even though the detaining authority passed the detention order only on 24.8.2007, the sponsoring authority, even before recommending for detention, had

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represented before the Principal Sessions Judge, Vellore in Crl.M.P.No.5923 of 2007 on 7.8.2007 itself, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982, which shows the pre-determination of mind on the part of the sponsoring authority.

6. The detention order was passed on 24.8.2007. But, the sponsoring authority, represented on 7.8.2007 before the learned Principal Sessions Judge, Vellore in Crl.M.P.No.5923 of 2007, a bail petition, that the detenu is likely to be detained under Tamil Nadu Act 14 of 1982. This, in our considered opinion, would show the pre-determination of mind on the part of the sponsoring authority. The detaining authority, while passing the order of detention, had failed to take notice of this pre-determined averment made by the sponsoring authority.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 24.8.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1.The Secretary to Government,Home,
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The District Magistrate
and District Collector
Vellore District
Vellore-9.

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3.The Superintendent,
Central Prison, Vellore.

4.The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St. George, Chennai-9.

5.The Public Prosecutor
High Court, Madras.

MS (CO)
km/6.12.

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